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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/239,873	01/29/1999	CINDIE M. LUHMAN	LL11.12-0040	6642
27367	7590	06/28/2004	EXAMINER	
WESTMAN CHAMPLIN & KELLY, P.A. SUITE 1600 - INTERNATIONAL CENTRE 900 SECOND AVENUE SOUTH MINNEAPOLIS, MN 55402-3319			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1616	

DATE MAILED: 06/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/239,873	LUHMAN, CINDIE M.	
	Examiner	Art Unit	
	Neil Levy	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration. *197-200, 205-214, 216-222*
- 5) ☒ Claim(s) _____ is/are allowed. *83-91, 145-148, 153-156, 161, 164-170, 175-178, 183-193*
- 6) ☒ Claim(s) 75, 79, 87, 115-118, 150-152, 158-160, 172-174, 180-182, 194-196, 202-204, 224-227, 230-236, 238-244, 246-

251 and 256

is/are rejected.

- 7) ☒ Claim(s) _____ is/are objected to. *76-78, 80-82, 119-122, 142-144, 252-255, 257-262*
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Continuation of Disposition of Claims: Claims pending in the application are 75-91, 115-122, 139, 142-148, 150-156, 158-161, 164-170, 172-178, 180-183, 186-192, 194-200, 202-205, 208-214, 216-222, 224-227, 230-236, 238-244, 246-262.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 75, 79, 150-152, 158-160, 172-174, 180-182, 194-196, 202-204, 224-226 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Please check spelling grammar etc; not able to be corrected by informal examiner amendments. We see a periods after production in claim 75; "product" not production, in claim 79.

Rejections of record under 1st and 2nd paragraph are withdrawn in view of applicant's amendments, claim 150 dependent cancelled 149.

Claims 75, 87, 115-118, 227, 230-236, 238-244, 246-251, 256 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,440,447. Although the conflicting claims are not identical, they are not patentably distinct from each other because the rejection of record is maintained.

If applicants' means to maintained ownership of both patents to the present assignee for the life of the current patent, examiner will reconsider the rejection.

Claim 75 is rejected under 35 U.S.C. 102(b) as being anticipated by Baalsrud et al 3959493.

The rejection of record is maintained. Claim 75 now constitutes glycerol or sorbitol or Xylitol – sorbitol is not required in claim 75. Thus applicant's arguments for sorbitol. Not persuasive. Claim 75 does not claim ruminally protected.

Claims 75, 79 are rejected under 35 U.S.C. 102(b) as being anticipated by Merensalmi -4127676.

The rejection of record is maintained. Applicant's arguments are that Merensalmi depends on in vitro data for hypotheses; However the Merensalmi methods are those as instantly claimed, and results are the same – increase in Milk production; although statistically in significant – but applicant's claim says nothing but amount of increase, either. Further, the increase is in late production, when increase would not be expected. Again, these claims are not limited to sorbitol.

Applicant's arguments filed s 1/29/04 have been fully considered but they are not persuasive. Applicants arguments, in essence, are that applicant feeds a ruminantly protected sorbitol, xylitol or glycerol, providing thereby a sufficient amount of the alcohol to reach the abomasums to increase, significantly, milk production in respect to generally reported aspects or components; dry matter, protein; etc.; in contrast to the prior art, which has shown any increases to be expected in accord with nutritional value of the sugar alcohol and /or as dependent upon ruminal microbial metabolism. The US patents cited do meet the instant claims language as rejections above indicate. We agree that combination with these references does not provide sufficient motivation or teaching for one in the art to utilize the secondary teachings with knowledge that so feeding sorbitol, Xylitol or glycerol would result in significantly increased milk component

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production, so the obviousness rejection is withdrawn. Claims not subject to rejection as indicated would then be allowable over the art of record, if amended as required to be in independent form and/or to correct the minor typos. All claims have been considered.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (571) 272-0619. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (571) 272-0602. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Levy/LR
June 17, 2004

NEIL S. LEVY
PRIMARY EXAMINER